

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RONALD B. WALKER, :
Plaintiff, : 18 Civ. 9437 (PAE) (SLC)
-v- :
: OPINION & ORDER
COMMISSIONER OF SOCIAL SECURITY, :
Defendant. :
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PAUL A. ENGELMAYER, District Judge:

Currently pending is defendant's motion to dismiss for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). Dkt. 19. Before the Court is the January 24, 2020 Report and Recommendation of the Hon. Sarah L. Cave, United States Magistrate Judge, recommending that the Court grant the motion based on plaintiff's failure to obtain a final decision by the agency and exhaust his administrative remedies. Dkt. 22 ("Report"). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC),

2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also*, e.g., *Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Cave's thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that "failure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review," Report at 9, the parties' failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court grants the motion to dismiss. The Court respectfully directs the Clerk to mail a copy of this decision to plaintiff at the address on file and close this case.

SO ORDERED.



Paul A. Engelmayer
United States District Judge

Dated: February 18, 2020
New York, New York